

# MEMORANDUM

ICIC  
Agenda Item No. 3(F)

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**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners


**DATE:** October 8, 2013

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution authorizing execution  
of a 10-year agreement between  
Florida City Gas and Miami-  
Dade County for natural gas  
transportation services to  
Alexander Orr and Hialeah-  
Preston Water Treatment Plants  
in the approximate amount of  
\$1,486,200.00

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The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Juan C. Zapata.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/smm

# Memorandum



Date: November 5, 2013

To: Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

From: Carlos A. Gimenez  
County Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the name in the 'From' field.

Subject: Resolution approving the execution of a 10-year transportation service agreement for natural gas fuel between Miami-Dade County and Florida City Gas waiving formal bid procedures and provisions pursuant to Section 2-8.1 of the Miami-Dade County Code and Section 5.03(D) of the Home Rule Charter

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## **RECOMMENDATION**

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution waiving formal bid procedures and provisions pursuant to Section 2-8.1 of the Miami-Dade County Code and Section 5.03(D) of the Home Rule Charter, and authorizing the execution of a ten (10) year agreement, the 2014 Agreement, between Miami-Dade County, through its Miami-Dade Water and Sewer Department (WASD or the Department), and Pivotal Utility Holdings, Inc. d/b/a Florida City Gas.

The 2014 Agreement (as attached) provides for the WASD to continue its connection to the Florida City Gas pipeline distribution system for the delivery of natural gas fuel to the County's Alexander Orr and Hialeah/Preston Water Treatment Plants, from January 1, 2014 to December 31, 2023 at below tariff rates, saving the County approximately \$6,627,600.00 in transportation service charges.

## **SCOPE OF AGENDA ITEM**

The impact of this transportation service agreement is county-wide.

## **FISCAL IMPACT/FUNDING SOURCE**

The fiscal impact of this 10-year agreement is approximately \$1,486,200.00. The funding source is WASD operating and maintenance revenues.

WASD will pay an average of \$0.02477 in transportation charges on a per therm basis (a unit of measure) for the delivery of natural gas to the Alexander Orr and Hialeah/Preston Water Treatment Plants. These costs are well under the current published tariff rate of \$0.13523 per therm.

## **TRACK RECORD/MONITOR**

WASD Deputy Director of Operations, Joseph A. Ruiz, will monitor the agreement.

## **BACKGROUND**

Since 1960, WASD has used Florida City Gas to transport natural gas fuel to the Alexander Orr and Hialeah/Preston Water Treatment Plants. The plants use natural gas fuel as part of the water treatment process. Florida City Gas provided the transportation of natural gas fuel by giving WASD access to their pipeline distribution system. In June 1998, WASD and Florida City Gas entered into a ten (10) year agreement (the 1998 Agreement), from July 1, 1998 through June 30, 2008, to transport natural gas fuel in therms to the water treatment plants. During the 1998 Agreement period, the fixed contract rates of \$0.01 and \$0.03 per therm were substantially below the published tariff rate, saving WASD

approximately \$500,000.00 per year compared to prior years.

In 2008, the County and Florida City Gas agreed to a successor ten (10) year contract (the 2008 Agreement) to continue providing natural gas transportation services to WASD at the same rates and conditions as the 1998 Agreement, subject to the approval of the Florida Public Service Commission. The Florida Public Service Commission staff advised Florida City Gas that it would not recommend approval because the rates did not recover the cost of the transportation service to the County. Florida City Gas began charging the Department the published tariff rates which WASD paid under protest for two (2) months, and the Department filed a petition for a formal administrative hearing requesting approval of the 2008 Agreement from the Florida Public Service Commission. A settlement was reached (the 2011 Settlement Agreement) during the course of the administrative hearing, by which 1) the original 2008 Agreement rates were applied from 2008 through 2011, and 2) from January 1, 2012 to December 31, 2013, the rates are based on the total volume of gas delivered to the respective plants. The 2011 Settlement Agreement expires on December 31, 2013.

The 2014 Agreement was already approved by the Florida Public Service Commission but needs to be approved by the Board and executed by the County before year-end. It will provide for the continuation of natural gas transportation services to the County's water treatment plants from January 1, 2014 to December 31, 2023. The rate structure in the 2014 Agreement benefits both WASD and Florida City Gas in that the contract rates established parallel those in the 2011 Settlement Agreement from January 1, 2012 – December 31, 2013 but with increased volumes of gas deliveries to the Alexander Orr and Hialeah/Preston Water Treatment Plants. Contract rate increases can only take place beginning in Year 5 (2018) to account for inflationary adjustments over the life of the 2014 Agreement. Any increase in the rates will be subject to an annual increase *equal* to the annual United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers. If the Consumer Price Index for All Urban Consumers for the prior year is less than or equal to zero, the transportation rate for each plant shall continue unchanged. This rate structure will provide cost-based rates that recover the incremental costs of the transportation service plus some additional amount for Florida City Gas to recover some of its common costs, at the same time it affords WASD the opportunity to increase the current volume of transportation services and receive lower rates based upon the total volumes delivered.

The 2014 Agreement was approved by the Florida Public Service Commission on August 27, 2013, and we recommend that the 2014 Agreement be approved by this Board as it is in the County's best interest.



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Alina T. Hudak  
Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** November 5, 2013

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☒ Applicable legislation requires more than a majority vote (i.e., 2/3's ☒, 3/5's ☐, unanimous ☐) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No.

11-5-13

RESOLUTION NO. \_\_\_\_\_

RESOLUTION WAIVING FORMAL BID PROCEDURES AND PROVISIONS PURSUANT TO SECTION 2-8.1 OF THE MIAMI-DADE COUNTY CODE AND SECTION 5.03(D) OF THE HOME RULE CHARTER BY TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING EXECUTION OF A 10-YEAR AGREEMENT BETWEEN FLORIDA CITY GAS AND MIAMI-DADE COUNTY FOR NATURAL GAS TRANSPORTATION SERVICES TO ALEXANDER ORR AND HIALEAH-PRESTON WATER TREATMENT PLANTS IN THE APPROXIMATE AMOUNT OF \$1,486,200.00; EXERCISING THE CANCELLATION AND RENEWAL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures pursuant to Section 2-8.1 of the County Code and Section 5.03 (D) of the Home Rule Charter by two-thirds (2/3) vote of the Board members present; approve the execution of a 10-year agreement between Florida City Gas and Miami-Dade County for natural gas transportation services to the Alexander Orr and Hialeah-Preston Water Treatment Plants in the approximate amount of \$1,486,200.00, in substantially the form attached hereto and made a part hereof; and authorize the County Mayor or County Mayor's designee to exercise cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman  
Lynda Bell, Vice Chair

Bruno A. Barreiro  
Jose "Pepe" Diaz  
Sally A. Heyman  
Jean Monestime  
Sen. Javier D. Souto  
Juan C. Zapata

Esteban L. Bovo, Jr.  
Audrey M. Edmonson  
Barbara J. Jordan  
Dennis C. Moss  
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 5<sup>th</sup> day of November, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Henry N. Gillman



**NATURAL GAS TRANSPORTATION SERVICE AGREEMENT  
BETWEEN  
FLORIDA CITY GAS  
AND  
MIAMI-DADE COUNTY**

Account Nos. 211-0756225-011, 211-0756239-011,  
211-0754412-011

THIS AGREEMENT made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between Pivotal Utility Holdings, Inc. d/b/a Florida City Gas, a New Jersey corporation, hereinafter referred to as "Company", and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "Customer" (collectively, with Company, the "Parties").

**WITNESSETH:**

WHEREAS, Company's Natural Gas Tariff ("Tariff") establishes transportation service to be provided pursuant to the Load Enhancement Service Rate Schedule having certain specific terms of applicability;

WHEREAS, Customer has requested that Company continue to render natural gas transportation service to Customer in accordance with the terms and conditions of this Agreement and Company has agreed to transport Customer's gas;

WHEREAS, Customer has a verifiable and documented bypass alternative;

WHEREAS, this Agreement is subject to the approval of the Florida Public Service Commission ("Commission") before the parties may execute this Agreement; and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, the Parties agree as follows:

## ARTICLE 1

### TERM OF AGREEMENT

1. Subject to all other provisions, conditions, and limitations hereof, this Agreement shall become effective as of billings rendered on or after January 1, 2014, upon the Commission's issuance of a final order making this Agreement effective (the "Effective Date") and the parties' execution pursuant to the terms herein. This Agreement shall continue in full force and effect through December 31, 2023, as set forth herein at which time the Agreement shall terminate (hereinafter, the "Term"). Upon written authorization by Customer, Company shall promptly file this Agreement and any related documentation with the Commission within ten (10) business days of such authorization in order to obtain the necessary Commission approvals. Company shall include Customer in any Commission filings or communications associated with the Commission's review and approval of this Agreement.

2. Company agrees, upon written request from Customer received by Company not less than one hundred eighty days (180) days prior to the termination date of this Agreement, to review the terms and conditions of the Agreement for the purpose of negotiating a successor agreement. Any successor agreement is contingent upon the Company and Customer mutually agreeing in writing to the terms and conditions for a successor term and the Commission approving such successor agreement. If this Agreement is not approved and made effective by the Commission subject to terms and conditions satisfactory to the Parties, this Agreement shall not become effective, and the parties will continue to negotiate a new agreement.

## ARTICLE II

### APPLICABILITY OF TARIFF

1. Based upon governing applicability provisions, the Parties hereby confirm that



Customer qualifies for the Load Enhancement Service Rate Schedule.

2. Except to the extent expressly modified by the terms of this Agreement, all service rendered by Company under this Agreement shall be provided pursuant to the terms and conditions of Company's Tariff, which is incorporated fully herein by reference, as filed with and approved by the Florida Public Service Commission from time to time.

3. The rates for transportation of natural gas to Customer's listed facilities shall be as set forth in Article VII of this Agreement.

### **ARTICLE III**

#### **POINTS OF RECEIPT AND DELIVERY**

1. Customer shall arrange for the delivery of all gas to be transported by Company hereunder to take place at those interconnections between Company and Florida Gas Transmission Company ("FGT") heretofore determined Point(s) of Receipt in Miami, Florida and Hialeah, Florida. All such gas received by Company shall be redelivered to Customer at those interconnections between the distribution system of Company and the facilities of Customer heretofore determined Point(s) of Delivery.

### **ARTICLE IV**

#### **OBLIGATIONS AND REPRESENTATIONS OF CUSTOMER**

1. Customer represents and Company acknowledges that it meets all qualifications for Load Enhancement Service,

2. Customer agrees to comply with all terms and conditions of this Agreement and the Company's Tariff, as approved by the Florida Public Service Commission, which terms and conditions are incorporated fully herein by reference and the applicable Rate Schedule as the

same may be amended or modified from time to time.

3. Customer warrants that it will, at the time of delivery of gas to Company for transportation hereunder, have good and merchantable title to the gas free and clear of all liens, encumbrances, and adverse claims. Customer agrees to provide Company with any documentation which may be requested in writing by Company to evidence Customer's title to the gas transported. Company reserves the right, without penalty or liability, to refuse transportation of any gas in the event Customer fails to provide such documentation upon Company's written request.

4. Customer warrants that all gas delivered to Company for transportation hereunder shall be of a merchantable quality and shall conform to the quality requirements set forth in the tariff of FGT as filed with and approved by the Federal Energy Regulatory Commission.

## ARTICLE V

### QUANTITY

1. Customer and Company agree that as of the Effective Date of this Agreement, the maximum annual contract quantity of gas ("MACQ") that Company is obligated to deliver to Customer under this Agreement in any contract year is:

Alexander Orr Water Treatment Plant (or "Orr" Plant)  
6800 S.W. 87th Avenue  
Miami, FL 33173  
Account # 211-0756225-011  
Account # 211-0756239-011  
4,200,000 therms

Hialeah Lime Recalcination Facility (or "Hialeah" Plant)  
700 W. 2nd Avenue  
Hialeah, FL 33010  
Account # 211-0754412-011  
3,300,000 therms

2. Company may, from time to time, make deliveries to Customer in excess of the above stated MACQs. However, if Customer desires to increase the MACQ for any facility, Customer will provide Company with a written request. Within ninety (90) days of the date of such request, Company shall provide Customer with proposed terms and conditions under which Company will be willing to increase MACQ. Such terms shall include, but not be limited to, Customer's willingness to pay, if necessary, an appropriate contribution to the cost of construction of additional facilities.

3. Customer hereby agrees to tender on a take or pay basis for transportation on Company's systems, during each annual period, a volume of gas equal to or greater than the minimum annual volume of 3,100,000 therms per year at the Orr plant (combining the volumes for the two meters), and 1,900,000 therms per year at the Hialeah plant. These take or pay minimums for each plant shall be temporarily suspended when Customer advises Company of a service outage at a specific plant of more than ninety (90) days, and the take or pay minimums shall be adjusted accordingly for that plant on a pro rata basis for the period of such outage.

4. The maximum daily contract quantity of gas ("MDCQ") Customer may have delivered to Company at the Points of Receipt, in the aggregate, for transportation by Company hereunder shall be 24,500 therms. During the Term of this Agreement, Customer may increase the MDCQ and/or the maximum deliveries designated herein for each Point of Receipt only with the prior consent of Company, and only upon such prior notice as Company may require under the circumstances.

## ARTICLE VI

### PARAMETERS OF SERVICE

1. Company does not warrant that transportation service will be available hereunder at all times and under all conditions.

2. Upon the effective date of any legislative, regulatory, judicial, or other legal action that materially affects any material terms of this Agreement, or the ability of Company or Customer to perform any material terms of this Agreement (hereinafter, the "Regulatory Change"), Company or Customer may, on thirty (30) days' written notice to the other require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required only to address the Regulatory Change. Any such modified terms shall be submitted as an amendment to the Commission for approval prior to execution by the parties, and the amended provisions shall be substituted in place of those previously in effect and shall become effective under this Agreement as of the effective date of the Commission approval unless the parties agree or the Commission orders a different date. In the event a Regulatory Change amendment is not renegotiated within ninety (90) days after such notice, the dispute may be referred to the Commission by either Party for its resolution. This paragraph does not permit a party to unilaterally seek or otherwise petition the Commission for a change in rates. Notwithstanding any Regulatory Change or any increase in rates by the Commission for a large volume customer receiving service under the GS-1250k Rate Schedule or under the Load Enhancement Service Rate Schedule, the rates in Article VII of this Agreement shall not change during the term of this Agreement except for the amount of the CPI-U increases provided in Article VII of this Agreement.

## ARTICLE VII

### RATES AND CHARGES FOR SERVICE

1. For the Term of this Agreement, Customer shall pay Company each month the following transportation charges for services rendered under this Agreement. The rates set forth below are subject to the tax and other adjustment terms of Company's Tariff, as applicable to the Customer.

2. The applicable natural gas transportation rates for service to Customer by Company for the period January 1, 2014, through December 31, 2017, under this Agreement shall be as follows (for purposes of this Agreement, the volumes delivered through the two meters at Orr shall be combined cumulatively for the purpose of determining the applicable monthly rate and total annual therms for Orr):

Plant	Orr		Hialeah	
Volume/Rate	Volume	Rate	Volume	Rate
Tier 1	3.10 million therms* to less than 3.45 million therms	\$0.0284	1.90 million therms* to less than 2.30 million therms	\$0.0350
Tier 2	3.45 million therms to less than 4.20 million therms	\$0.0227	2.30 million therms to less than 2.65 million therms	\$0.0281
Tier 3	4.20 million therms and higher	\$0.0185	2.65 million therms and higher	\$0.0245

\* This is the take or pay minimum billable volume for this plant except as may be adjusted.

3. Annual Price Increase. Beginning January 1, 2018, and continuing through December 31, 2023, the rate for natural gas transported to the Customer's Orr and Hialeah plants by Company shall be increased effective January 1 for each year by the annual United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers ("CPI-U") as

reported in January of each such year for the prior twelve (12) calendar months (i.e., January 1 to December 31). For any year subject to a price increase (2018-2023), if the CPI-U for the prior year is equal to or less than zero, the rate shall not be increased or decreased but shall continue for that year unchanged from the rate of the prior year.

4. For service beginning January 1, 2014, Customer will notify Company of its estimated transport volumes for Orr and Hialeah no later than ten (10) days prior to the beginning of each quarter. Company will bill Customer monthly based on the applicable rate for the estimated volumes at Orr and Hialeah provided by Customer.

5. Company will perform an annual true-up of Customer's monthly billings for Orr and Hialeah within forty-five (45) days following the conclusion of the calendar year so that Customer's final rate per therm matches the corresponding rate per therm at each plant respectively, based upon the total annual volumes at each plant, and which may require a refund to or a supplemental payment from Customer based upon actual volumes or failure to meet the take or pay minimum.

6. There shall be no additional charge over the rates specified in this Article for each therm transported to each facility in excess of MACQ as set forth in Article V in any contract year, provided that any transportation service in excess of the MACQ figures set forth above in any contract year do not require Company to construct additional facilities to provide such service to Customer. The terms and conditions with respect to any increase in the MACQ and construction of associated additional facilities are subject to the terms of Paragraph 2 of Article V of this Agreement.

**ARTICLE VIII**  
**MEASUREMENT**

1. Company agrees to install and maintain facilities necessary to deliver and accurately measure the gas to Customer at the Points of Delivery.
2. Quantities of gas delivered to Company's distribution system at the Points of Receipt for the account of Customer shall be measured by FGT. All charges billed to Customer hereunder shall be based on the measurements made at the Points of Delivery. Measurement shall include temperature-correcting devices installed and maintained by Company to ensure proper billing of gas, corrected to 60 degrees Fahrenheit, at no cost to Customer.
3. Customer may, with the prior written consent of Company, which shall not be unreasonably withheld, and at no cost to Company, install check-measuring devices at the Points of Delivery.

**ARTICLE IX**  
**FULL REQUIREMENTS**

1. It is understood and agreed that Company's rendering of gas transportation service under the terms and conditions of this Agreement is in consideration of Customer's agreement to utilize exclusively such services for all pipeline-transported natural gas consumed at Customer's facilities as listed in Article V herein, from the Effective Date hereof and during the Term of this Agreement and any renewals thereof. Accordingly, Customer agrees that Customer will not, for the Term of this Agreement, and any renewals thereof, displace any service provided under this Agreement with service from any third party.

## ARTICLE X

### FACILITIES

1. All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company.

## ARTICLE XI

### NOMINATIONS AND NOTICE

1. Customer, or its agent supplier, shall make all nominations of service (advice regarding the next month's anticipated consumption) on Company's system hereunder on the appropriate form provided by Company. Customer, or its agent, shall submit any new nomination for service a minimum of ten (10) working days prior to the commencement of the transportation service and shall submit a request for a change to an existing nomination a minimum of three (3) working days prior to the date the change is to become effective.

2. Customer or its agent, not Company, shall be responsible for making all transportation agreements and nominations to all third parties upstream of Company's Points of Receipt. Customer may use a broker for this purpose. If Customer utilizes a broker to make such transportation arrangements and nominations on the interstate system upstream of Company's system, Customer shall identify the broker initially and upon a change.

3. All nominations and adjustments to nominations shall be directed to:

Mr. Phil Buchanan  
Manager of Gas Operations  
AGL Resources  
10 Peachtree Place NE, Suite 800  
Atlanta, GA 30309  
Office: 404-584-4161  
Cell: 404-379-3929



Any service inquiries or correspondence regarding the administration of nominations shall be directed to:

Ms. Carolyn Permudez  
Florida City Gas  
955 E. 25<sup>th</sup> Street  
Hialeah, FL 33013  
Office: (305) 835-3606  
Cell: 786-218-0861  
Fax: 305-691-7335

OR

Mr. Marc Seagrave  
Director New Business Development  
Florida City Gas-AGL Resources  
955 E. 25<sup>th</sup> Street  
Hialeah, FL 33013  
Office: 305-835-3651  
Fax: 305-691-7335

4. All payments shall be directed to:

Florida City Gas  
Location 1190  
P.O. Box 5720  
Atlanta, GA 31107-0720

5. To the extent any form of notice, other than notice related to nominations or administration of nominations, must be provided to either Party, notice should be sent to the following persons:

For Miami-Dade Water and Sewer Department:

Mr. Ralph Terrero, Assistant Director  
Water and Sewer Department  
3071 SW 38<sup>th</sup> Avenue  
Miami, Florida 33146  
Phone: 786-552-8112  
Fax: 786-552-8639

With a copy to:

Office of the County Attorney  
Stephen P. Clark Center  
111 Northwest First Street, Suite 2800  
Miami, Florida 33128-1993

For Florida City Gas:

Ms. Carolyn Bermudez  
Florida City Gas  
955 E. 25<sup>th</sup> Street  
Hialeah, FL 33013  
Cell: 786-218-0861  
Fax: 305-691-7335

With a copy to:

General Counsel  
AGL Resources Inc.  
Ten Peachtree Place  
Atlanta, GA 30309

## **ARTICLE XII**

### **FORCE MAJEURE**

1. Neither Company, nor Customer or its agents, shall be liable for damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God; strikes; lockouts; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of rules and people; civil disturbances; explosions; temporary failure of gas supply; temporary failure of firm transportation arrangements; the binding order of any court or governmental authority, which has been resisted in good faith by all reasonable legal means; acts of third parties; or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the

Party, and which by the exercise of due diligence such Party is unable to prevent or overcome.

2. Such cause or contingencies affecting the performance by Company, Third Party Supplier, or Customer, however, shall not relieve Company or Customer of liability in the event of its concurrent negligence, or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve either party from its obligations to make payments of amounts then due hereunder in respect of gas theretofore delivered. In any event, the liability of Customer for damages shall be limited as provided in Section 768.28, Florida Statutes.

### ARTICLE XIII

#### MISCELLANEOUS

1. The captions in this Agreement are for the convenience of the Parties in identification of the provisions hereof and shall not constitute a part of the Agreement, nor be considered interpretive thereof.

2. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties; provided, however, neither Party may make an assignment hereunder without having first obtained the prior written consent of the other Party. Such consent shall not be unreasonably withheld. If either Party does not provide such consent within sixty (60) days after receipt of the other Party's notification of assignment, failure to reply shall be deemed as consent. Any notification of assignment or consent to assignment shall be made by registered mail and provided to the individuals identified in Paragraph 5 of Article XI of this Agreement.

3. The interpretation and performance of this Agreement shall be governed by the

laws of the State of Florida. Venue for any civil action arising out of this Agreement shall be Miami-Dade County, Florida.

4. This Agreement shall be subject to all of the rules and regulations of any duly constituted federal or state regulatory authorities having jurisdiction hereof. Company and Customer shall comply at all times with applicable federal, state, municipal, and other laws, ordinances, and regulations.

5. This Agreement contains the entire understanding of the Parties with respect to the matters contained herein and may be modified only in writing duly executed by authorized representatives of the Parties.

6. Unless expressly set forth herein or in the Company's Tariff, except for either party's gross negligence or willful misconduct, under no circumstances shall either party hereto be liable to the other party for any indirect, incidental, consequential, special or punitive damages for lost profits or costs of procurement of substitute goods (including, without limitation, cover), regardless of the form of action, whether in contract, warranty, strict liability or tort, even if such party has been advised of the possibility of such damages. The terms of this paragraph shall survive termination of this Agreement.

7. After Commission approval, this Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

In witness whereof, MIAMI-DADE COUNTY and PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, by and through their duly authorized officers, have executed this Agreement as of the date first written above.

(SEAL)

PIVOTAL UTILITY HOLDINGS, INC.  
D/B/A FLORIDA CITY GAS

By: Jesse W. Killings  
Jesse Killings, VP Operations, FCG

By: \_\_\_\_\_  
Deputy Clerk

ATTEST:

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida

Harvey Ruvin

By its Board of County Commissioners

Clerk of the Board:

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
COUNTY MAYOR

Approved as to form and  
Legal sufficiency

By: [Signature]  
Assistant County Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of natural gas transportation service agreement between Florida City Gas and Miami-Dade County, through Miami-Dade Water and Sewer Department.

DOCKET NO. 130089-GU  
ORDER NO. PSC-13-0402-PAA-GU  
ISSUED: August 30, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On April 23, 2013, Florida City Gas (FCG) and Miami-Dade County, Florida through the Miami-Dade County Water and Sewer Department (MDWASD) filed a joint petition for approval of the 2014 Natural Gas Transportation Service Agreement (2014 TSA) between FCG and MDWASD effective January 1, 2014. The 2014 TSA provides for rates, terms, and conditions of natural gas transportation service to MDWASD's Alexander Orr (Orr) and Hialeah-Preston (Hialeah) water treatment plants pursuant to FCG's Load Enhancement Service Rate Schedule (LES tariff), which sets forth the requirements for preconditions for negotiated contracts that are subject to Commission approval. On July 19, 2013, FCG and MDWASD submitted a minor modification to the 2014 TSA.

FCG is a public utility as defined by Section 366.02(1), Florida Statutes (F.S.). MDWASD is a water and sewer utility operating in Miami-Dade County, Florida, serving more than two million customers. MDWASD utilizes natural gas at its Orr and Hialeah plants to heat lime kilns that produce lime for the water treatment process. The natural gas is also used to power high service pumps that pump water through MDWASD's water distribution system to customers.

FCG has provided natural gas transportation service to MDWASD's Orr plant since the mid-1980s and to the Hialeah plant since the early 1990s. Currently, FCG is providing natural gas transportation service to MDWASD's Orr and Hialeah plants pursuant to a 2011 Transportation Service Agreement (2011 TSA) that was approved by the Commission.<sup>1</sup> The 2011 TSA expires on December 31, 2013; there is no provision for an extension or continuation.

Contract rate transportation service is available to certain large volume customers like MDWASD subject to Rule 25-9.034, Florida Administrative Code, and to the terms and conditions of FCG's Commission-approved LES tariff.<sup>2</sup> Under the terms of the LES tariff, FCG can negotiate individual service agreements provided the following preconditions to service are met:

(a) The customer must be a commercial customer that currently receives service under contract or otherwise would take service pursuant to the Flexible Gas Service (FGS), Contract Demand Service (KDS), Transportation Supply Service (TSS), Off-System Sales Service (OSS), or GS-1250k rate schedules in FCG's tariff.

(b) The customer must have an alternative energy source or an economic natural gas bypass alternative, the availability of which shall be documented by the customer and verifiable by FCG.

(c) FCG must demonstrate to the Commission that service under the proposed contract will not impose any additional costs on FCG's other rate classes, including at a minimum, that the rate shall not be set lower than the incremental cost of service plus some additional amount as a reasonable return on investment.

(d) FCG is not compelled to offer service under contract, but if offered it shall be pursuant to mutually agreeable terms and conditions.

(e) In developing rates for a contract under the LES tariff, FCG is required to evaluate competitive and overall economic market conditions.

(f) The agreed-upon contract must be approved by the Commission prior to execution by the parties.

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

The 2014 TSA continues the plant-specific volumetric rate structure first established in the 2011 TSA, but with updated volumes and rates for each plant which joint petitioners indicate over the life of the contract will provide for cost-based rates that recover the incremental costs of service plus some additional amount to recover some of FCG's common costs. This overall rate

<sup>1</sup> See Order No. PSC-12-0171-AS-GU, issued April 2, 2012, in Docket No. 090539-GU, In re: Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer Department.

<sup>2</sup> Id.

structure and schedule affords MDWASD the opportunity to increase the volume of FCG's transportation services and receive a lower rate based upon the total volume delivered and the incremental cost applicable to MDWASD at each location.

MDWASD has kilns at the Orr and Hialeah treatment plants that utilize the natural gas transported by FCG to recycle calcium carbonate to produce the lime used to soften water as part of the water treatment process. According to MDWASD, any lime not produced on-site in the natural gas power kilns must be purchased and transported at a significantly higher cost than MDWASD's cost to produce lime. MDWASD recently made a significant capital investment to rebuild the main lime kiln at the Orr plant. MDWASD has expressed its desire for more gas to produce more lime, thus reducing its purchased lime and reducing its costs. Now that the enhancements to the Orr plant kiln have been completed, MDWASD will have a greater and more reliable ability to produce more lime at the Orr plant that should enable it to utilize natural gas more consistently and in amounts that exceed historical levels.

The volumetric rate structure included in the 2014 TSA will facilitate MDWASD's overall cost of treatment to the ultimate benefit of MDWASD's water customers, some of whom are also FCG customers. As for FCG, the company indicates that the lower natural gas transportation rate associated with the increased volumes of gas transported in the successive rate structure tiers reflects FCG's lower cost to provide its transportation service as the volumes increase while still recovering its costs plus some contribution to its common costs. The LES tariff indicates the Competitive Rate Adjustment tariff may apply in this instance.

One new provision in the 2014 TSA (in comparison to the 2011 TSA) is a designated minimum volume of gas to be transported each year by FCG. This "take or pay" provision in Article V, Section 3 was an integral part of the overall negotiation of the 2014 TSA and reflects MDWASD's commitment to continue to utilize the transportation services provided by FCG. The minimum volumes are subject to a suspension or "out" provision for extraordinary circumstances in the event that service was to be interrupted for more than 90 days. The joint petitioners believe that MDWASD can still meet the take or pay minimum volumes during service interruptions of 90 days or less, but the petitioners recognize that an interruption in service greater than 90 days reflects a significant issue that warrants a suspension of the take or pay minimum during such extended outage.

The proposed term of the 2014 TSA is for ten years beginning January 1, 2014, which would ensure a seamless transition from the current 2011 TSA that expires on December 31, 2013. Beginning in Year 5 (2018), the plant-specific rates for each rate tier are subject to an annual increase equal to the annual United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) as reported in January for the prior twelve calendar months (January 1 through December 31). For any year that is subject to a price increase under the agreement (2018 through 2023), if the CPI-U for the prior year is equal to or less than zero, then the transportation rates for each tier for each plant shall continue for that year unchanged from the rates of the prior year. FCG believes that adjusting the rates each year beginning in 2018 based upon the CPI-U will provide an effective mechanism for ensuring that FCG's rates continue to recover its cost plus an additional increment throughout the entire term of the agreement.



We have historically approved various load retention tariff schedules similar to FCG's LES tariff for gas transportation utilities, which are designed to allow utilities to retain customers who have demonstrated the ability to bypass utility facilities at costs below the normal tariff rates.<sup>3</sup> In instances of demonstrated bypass, load retention tariffs typically encourage negotiated rates that allow the utility to cover its cost of providing service to the customer plus provide some amount of contribution to the common costs of the utility. FCG's LES Rate Schedule's section titled "Applicability" includes the requirement that "the Customer must provide the Company verifiable documentation of either a viable alternative fuel or of a Customer's opportunity to economically bypass the Company's system." MDWASD's bypass opportunities in this case reflect its potential ability to tie directly into nearby Florida Gas Transmission lines rather than purchase gas from FCG.

FCG and MDWASD provided detailed documentation in Exhibit C of the joint petition that included presentations of MDWASD's costs to bypass FCG's system at both the Orr and Hialeah plants. Substantial additional information was provided by the joint petitioners in response to data requests from staff. FCG has indicated its concurrence with MDWASD that the bypass options available to MDWASD are viable.

To demonstrate the viability of bypass options, it is necessary to show that MDWASD's estimated cost per therm to bypass FCG's system would be less than the cost per therm that MDWASD would be charged under the normal GS-1250k tariff rate. For purposes of comparing the cost per therm rates, the joint petitioners' projected volumes of 3,469,000 therms per year and 2,727,911 therms per year (total of 6,196,911 therms per year) for the Orr and Hialeah plants, respectively were used.<sup>4</sup> The applicable GS-1250k tariff rate is approximately \$0.1369 per therm. Exhibit C to the joint petition indicates that MDWASD's estimated costs to bypass FCG's system for the Orr and Hialeah plants are \$0.0233 per therm and \$0.0453 per therm, respectively. These bypass cost estimates are well below the GS-1250k rate of \$0.1369. Based on review of materials submitted in support of the joint petition and additional information provided in response to staff data requests, we find that the joint petitioners have provided reliable documentation that MDWASD has verifiable and documented bypass alternatives to the FCG gas transportation facilities at the Orr and Hialeah plants.

Under the terms of the LES tariff, FCG must demonstrate that service under the proposed contract will not impose any additional costs on FCG's other rate classes, including at a minimum, that the rate shall not be set lower than the incremental cost of service plus some additional amount as a reasonable return on investment. The cost support data for the 2014 TSA provided in the joint petition was compared to the cost support that was provided for the 2011 TSA in Docket No. 090539-GU. The cost support data for reasonableness of the estimates of depreciation expense, operations and maintenance expense, taxes, return on investment, and

<sup>3</sup> See Order No. PSC-00-1592-TRF-GU, issued September 5, 2000, in Docket No. 000717-GU, In re: Petition for authority to implement contract transportation service by City Gas Company of Florida; Order No. PSC-96-1218-POF-GU, issued September 24, 1996, in Docket No. 960920-GU, In re: Petition for approval of flexible service tariff by City Gas Company of Florida; Order No. PSC-98-1483-POF-GU, issued November 5, 1998, in Docket No. 980895-GU, In re: Petition by Florida Division of Chesapeake Utilities Corporation for authority to implement proposed flexible gas service tariff and to revise certain tariff sheets.

<sup>4</sup> FCG response to Staff's First Data Request, Question No. 1-3.1

other expenses was also reviewed. Since the term of the 2014 TSA (10 years) is substantially longer than the term of the 2011 TSA (2 years), several areas of cost risk, including the impacts of inflation and volumetric shortfalls among other risks were reviewed.

While the specific details are confidential, the cost support provided by the joint petitioners indicates that FCG's operations and maintenance expense estimates account for inflation for all years. In order for contract rates to be set at a level to allow recovery of incremental costs, the parties negotiated inflationary adjustments to the 2014 TSA rates for Years 5-10 of the contract term.

The incremental cost of service to the Orr and Hialeah plants to each plant's proposed 2014 TSA rates were compared. We note that the proposed 2014 TSA rates are set higher than incremental costs for all tier levels (1-3) and all years in the contract term (2014-2023) for both the Orr and the Hialeah plants. The total marginal revenue for the contract term (total revenue less inflation-adjusted costs for the 10 year term) is relatively small, especially for volumes based on proposed Tier 3 volumes and rates. In order to help assess whether rates under the 2014 TSA provide sufficient headroom to cover specified cost risks, our staff evaluated the cost impact of volumetric shortfalls.

The risk of volumetric shortfalls has been addressed, at least in part, by the take or pay provision of the 2014 TSA noted earlier. Under the take or pay provision, if actual volumes are less than the take or pay volumes, the 2014 TSA rates are set sufficiently high to recover the incremental costs of service and provide some level of contribution.

However, the 2014 TSA also contains terms for take or pay temporary suspensions. A suspension becomes effective when MDWASD provides notice to FCG of a volume shortfall associated with a service outage of more than 90 days. The associated loss of revenue can result in FCG not recovering its incremental cost during the year in question if the outage is of sufficient duration. MDWASD has indicated that the prospect of unanticipated shutdowns remains, despite the rebuild of the Orr plant kiln in 2012-2013 and the major overhaul of the Hialeah plant kiln in 2008-2009, due to stress and fatigue on the lime kilns from constant operation and high operating temperatures.

MDWASD reports the vast majority of unanticipated shutdowns are of long duration due to the difficulty in obtaining replacement materials and finding qualified craftsman installers. However, MDWASD states, "Based on its long history of operation, [MD]WASD does not expect many emergency shutdowns after both kilns are fully repaired and operating (note recent history of Hialeah kiln)."<sup>5</sup> Since its four-month rebuild in 2008 and 2009, the Hialeah plant kiln has operated continuously except for a minor shutdown occurring in October 2010. Also, MDWASD has great incentive to keep any outages as short as possible since MDWASD must pay for expensive lime for each day the kilns do not operate. In addition, the parties have clarified that prorated take or pay volumes apply to the first 90 days of a shutdown wherein MDWASD has requested a take or pay suspension. Thus, the take or pay suspension begins on Day 91 of any such shutdown, so that MDWASD will be working to effect a repair of the kiln

<sup>5</sup> Joint Petition, Exhibit E, page 5 of 10

during the first 90 days of the outage during which MDWASD would be subject to take or pay minimum volumes.

Clearly, the number and the duration of unanticipated outages of the lime kilns will be a major factor in determining whether the total marginal revenue of the 2014 TSA in the aggregate over the contract term is positive or negative. However, we find that it is unlikely that total marginal revenue will be negative over the term of the contract given the recent kiln rebuilds, strong incentives for minimizing outage times, and the 90 day delay in the suspension of the take or pay provision during a prolonged outage. On balance, we find that the 2014 TSA rates are set above the incremental cost of service.

Based upon review of the materials submitted in support of the joint petition and the additional information provided by the parties, we hereby grant the joint petition for approval of the 2014 TSA between FCG and MDWASD. The joint petitioners have reasonably demonstrated the existence of economically viable options for MDWASD to bypass FCG's system at both the Orr and Hialeah plants. On balance, we find that the rates in the 2014 TSA will recover FCG's costs plus an additional increment throughout the entire term of the agreement. Continued service to MDWASD at the Orr and Hialeah plants under the 2014 TSA will not adversely impact FCG's other customers.

The overall term of the 2014 TSA also provides important economic development benefits to the joint petitioners and their respective customers. The future growth and development of Miami-Dade County depends upon a sufficient and adequate supply of clean drinking water. By entering into a ten-year natural gas transportation contract with FCG, MDWASD has an important component of its water treatment costs set, thus helping to ensure the reliability of its water system. For FCG and its ratepayers, the take or pay requirements of the contract provide a reliable minimum revenue stream while the overall term of the agreement, when combined with the various system improvements being made by MDWASD, ensure a long term commitment by MDWASD to continue to receive transportation service from FCG.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the 2014 Natural Gas Transportation Service Agreement between Florida City Gas and Miami-Dade County, Florida through the Miami-Dade County Water and Sewer Department, is hereby approved. It is further

ORDERED that if a timely protest is filed within 21 days of the issuance of this order, the 2014 Natural Gas Transportation Service Agreement between Florida City Gas and Miami-Dade County, Florida through the Miami-Dade County Water and Sewer Department shall remain in effect subject to refund pending resolution of the protest. It is further

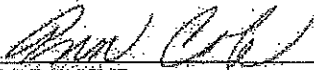
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of the Commission Clerk, 2340 Shumard Oak Boulevard, Tallahassee, Florida 32399-

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0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 30th day of August, 2013.

  
ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 20, 2013.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of natural gas transportation service agreement between Florida City Gas and Miami-Dade County, through Miami-Dade Water and Sewer Department.

DOCKET NO. 130089-GU  
ORDER NO. PSC-13-0436-CO-GU  
ISSUED: September 24, 2013

CONSUMMATING ORDER

BY THE COMMISSION:

By Order No. PSC-13-0402-PAA-GU, issued August 30, 2013, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order, in regard to the above mentioned docket. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-13-0402-PAA-GU has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of September, 2013.



ANN COLE  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any judicial review of Commission orders that is available pursuant to Section 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.